



THOMAS CHARLES MUNGER

Bar Association Section

In the Bar Association Section of former issues of this law review will be found a unique collection of historical material relating to the Nebraska bench and bar in its earlier days.

This issue we devote to memorials to two Nebraskans recently deceased—Thomas C. Munger, lawyer and judge, and Henry H. Wilson, lawyer and law teacher. They were contemporaries and friends. We print a reproduction of the portrait of Judge Munger that hangs in the courtroom in which he presided so many years as judge and of the portrait of Henry H. Wilson presented by his former students to the law school he served from its foundation.

The services and influence of these men extended far beyond court and school. We hazard the prediction that few men of their generation will have such a permanent affect upon the Nebraska bar and jurisprudence. We know that few men have been more generally admired and respected by Nebraska lawyers. We believe that all Nebraska lawyers will be glad to have these memorials made available to them and produced in such a form that they may be kept as permanent records.

IN MEMORIAM

HONORABLE THOMAS CHARLES MUNGER (1861–1941)

Conducted by the United States District Court for the District of Nebraska, in the Lincoln Division, under the direction of a committee appointed by the court, composed of the following members of the bar:

R. O. WILLIAMS, *Chairman*

MAX V. BEGHTOL	J. A. C. KENNEDY
FREDERICK S. BERRY	HENRY MONSKY
PAUL E. BOSLAUGH	ROBERT R. MOODIE
RAYMOND M. CROSSMAN	JAMES G. MOTHERSEAD
FRED M. DEUTSCH	JOHN C. MULLEN
RODNEY DUNLAP	CHARLES S. REED
LESTER L. DUNN	DON W. STEWART
EDGAR FERNEAU	OTTO F. WALTER
WILLIAM C. FRASER	ARTHUR R. WELLS
PAUL F. GOOD	FRANK D. WILLIAMS
WALTER D. JAMES	RAYMOND G. YOUNG

BE IT REMEMBERED that on Monday, May 18, 1942, the court met at 10 a.m., pursuant to adjournment, in the Federal Court Room of the United States District Court, in the city of Lincoln, and was opened in due form, the following judges present and sitting:

Honorable Joseph W. Woodrough, Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Honorable Harvey M. Johnsen, Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Honorable James A. Donohoe, United States District Judge for the District of Nebraska.

Honorable John W. Delehant, United States District Judge for the District of Nebraska.

WHEREUPON the following proceedings were had and entered of record, Judge Woodrough presiding:

JUDGE WOODROUGH: The other business of this court has been set aside for this morning, in order that the members of the judiciary and the bar may take this occasion in which to express themselves and pay respect to the memory of our esteemed Thomas C. Munger, a great jurist who has passed on after long service in our midst.

On this occasion we have received a great many communications from those who are here in spirit but unable to be present in person. Out of those communications we have collected a few which I am going to ask Judge Delehant to read.

JUDGE DELEHANT: From the Senior Circuit Judge of this circuit, the following letter comes directed to Mr. R. O. Williams, Chairman of the Bar Committee:

Dear Mr. Williams:

I am disappointed at not being able to come to the memorial exercises for Judge Munger. Mrs. Stone is ill and it is inadvisable for me to leave her.

For almost 25 years I knew Judge Munger and worked with him upon the Court of Appeals and in other ways. From the beginning of our acquaintance he aroused my respect. As I grew to know him better, admiration and affection for his character were added to the deep respect I had for his learning, ability and public services. Not only the people of Nebraska but of the entire Eighth Circuit and, indeed, of the whole country lost a wonderful man and a splendid judge when he passed.

One of the fortunate things about judicial work is that at least some of it is preserved in the form of opinions. In this very definite way, the fine services of Judge Munger will pass on to benefit generations which will never know him otherwise. To those of us who had the fine privilege of knowing him personally, he left memories which will endure and make sweeter our lives to the end.

Please present my respects to his splendid wife and his fine son.
(Signed) KIMBROUGH STONE.

From Honorable Andrew Miller, retired Judge of the United States District Court, District of North Dakota, directed to Honorable J. A. Donohoe, Omaha, Nebraska, comes the following letter:

My dear Judge Donohoe:

I regret that it will not be reasonably convenient for me to be with you on May 18th, for the memorial services in honor of my old and good friend, the late Thomas C. Munger.

To me he exemplified the highest type of citizenship. He had in rare combination all the virtues that made a lovable man, a profound lawyer and a truly great judge. May he rest in peace.

(Signed) ANDREW MILLER.

From Honorable A. Lee Wyman, Judge of the United States District Court, District of South Dakota, comes this letter, directed to Judge Donohoe:

My dear Judge Donohoe:

I am in receipt of the invitation of Judge John W. Delehant and yourself to attend the memorial services to be held at Lincoln in honor of the late Judge Thomas C. Munger, and regret to state that due to the fact that I will at that time be in the midst of a term of court at Pierre, South Dakota, it will be impossible for me to be in attendance.

Judge Munger's long and distinguished service as a jurist and his sterling characteristics as a man justly endeared him to the hearts of a great many people, and I am sure that this fitting tribute to his memory will meet with the approval and be appreciated by his host of friends and acquaintances.

Again assuring you of my regret, I am,

Very truly yours, (Signed) A. LEE WYMAN.

From Honorable John B. Sanborn, Judge of the United States Circuit Court of this circuit, comes this letter:

I received your letter of April 27th advising me that memorial services will be held in honor of the late Judge Thomas C. Munger in the United States District Court room at Lincoln, Nebraska, at 10 o'clock on the morning of Monday, May 18, 1942.

I regret that it will not be possible for me to be there. I wish that I could be there in order to indicate the admiration which I always had for Judge Munger. I know of no judge who rendered a finer judicial service than he.

With very best regards, I am,

Sincerely yours, (Signed) JOHN B. SANBORN.

From Honorable Robert C. Bell, Judge of the United States District Court for the District of Minnesota, has been received this letter, directed to Honorable J. A. Donohoe, United States District Judge:

Dear Judge Donohoe:

I very greatly regret that it will be impossible for me to attend the memorial services in honor of the late Judge Thomas C. Munger at Lincoln May 18, 1942, as I shall be engaged in the trial of cases on that date.

I had the pleasure of knowing Judge Munger for many years and of serving on the Court of Appeals with him. Undoubtedly, he was one of the outstanding judges of the United States courts during his time. He was a gentleman, a scholar, and a delightful companion who commanded the admiration and respect of all of his contemporaries. I wish that I might be present.

With personal regards to you and Judge Delehant, believe me,
Sincerely yours, (Signed) ROBERT C. BELL.

JUDGE WOODROUGH: The President of the State Bar Association, Honorable Paul E. Boslaugh, has undertaken the duty of presenting to us the resolution of the association. Mr. Boslaugh.

MR. PAUL E. BOSLAUGH: If your Honors please, I have the honor to present the report of the committee, and the resolution of the bar in respectful and affectionate tribute to the memory of Judge Thomas C. Munger, with a request that it be embodied in the permanent records of this court, and that a copy be transmitted to his family.

Thomas Charles Munger was born July 7, 1861, at Fletcher, Miami County, Ohio, the son of Samuel C. Munger and Mary Ervin Munger. His father was a farmer and his mother had been a teacher. He attended public school in Van Wert, Ohio, until 1877, when the family moved to New Sharon, Mahaska County, Iowa, where he graduated from high school in 1879. His family then moved to Nebraska City. There he continued his studies, especially in Latin and Greek in the Episcopal school, working on a farm in the summer.

In the fall of 1881 he entered Iowa College at Grinnell, Iowa, where he remained for one year. He was then employed as a surveyor for the Chicago & Northwestern Railroad in South Dakota. He attended the Union College of Law in Chicago from September, 1883, to June of 1884, and he then went to Portland, Oregon, as a railroad surveyor. He later returned to Nebraska and taught in the Lancaster County schools for one year, continuing his law studies in the evenings. He was admitted to the bar in Lincoln in March, 1885. His admission is recorded in Volume 17 of the *Nebraska Reports*.

He began the practice of law in Benkelman, Nebraska, where he became county attorney, and was active in assisting settlers to locate on homesteads. He returned to Lincoln in 1886 and became associated with W. H. Snelling in the firm of Snelling & Munger. Later, and for many years, he was associated with the late John M. Stewart in the firm of Stewart & Munger.

In November, 1894, he was elected a representative in the Nebraska Legislature from the Lancaster County District, and served the two-year term, beginning in January, 1895. He was elected and served as county attorney of Lancaster County from 1897 to 1901.

On March 1, 1907, he was appointed United States District Judge for the District of Nebraska by President Theodore Roosevelt, becoming the first incumbent of the additional judgeship created by the Act of Congress of February 27, 1907 (34 Stat. 997). He retired on August 1, 1941, but continued to discharge the duties of his office until his death, November 29, 1941.

At the time of his death, Judge Munger was the senior in length of service of all the judges then on the federal bench. He was first listed as a district judge in Volume 150 of the *Federal Reporter*, and of all the other federal judges there named, only Judge Joseph Buffington, of the Third Circuit, and Judge Robert E. Lewis, of the Tenth Circuit, both of whom had previously retired, were living at the date of the retirement of Judge Munger.

The period of his service witnessed a great extension of the powers of the Federal Government, particularly under the Commerce Clause. Legislation showed a changed concept of state and national duties in the social and industrial spheres. There was a revolution in federal and state taxing systems. All this legislation raised many questions of constitutional law, and it became necessary for the federal courts to apply constitutional principles to new and rapidly shifting regulations, facts and conditions of American life. The creation of the many administrative agencies in which there was no separation of the legislative, administrative or judicial powers, and the eager assertion of jurisdiction in all these fields by such agencies, created difficult and complicated problems for the federal courts.

During the almost thirty-five years of his service, the published opinions of the circuit and district courts filled 313 volumes.

Judge Munger's natural endowments, industry and studious habits qualified him well to meet the problems involved in exploring new trails beyond the old frontiers, and of adjusting old principles to new facts. He was industrious in research, and his opinions were learned, concise, and clearly reasoned. He wrote with great deliberation and

care. His decisions concealed the effort and time involved in their creation. There were no statements of immaterial matters, no long or unnecessary quotations, no superfluous citations. His sound learning, ripe experience, calm judgment, and knowledge of federal precedents are evident from his published opinions.

As a trial judge he will be remembered by the lawyers who practiced before him for his retentive memory which enabled him to recall instantly the testimony of witnesses, even at the end of a long trial and days after the testimony had been delivered. His fairness and willingness to give all a hearing was so universally known and recognized that it came to be assumed by members of the bar without comment or surprise. He was always considerate of, patient with, and helpful to the young, inexperienced practitioner in his court.

The life story of Judge Munger was typically American. He was always the modest, soft-spoken gentleman, with a high sense of his judicial responsibility, and a firm conviction of what was right. He possessed in highest degree a judicial temperament, and to say that of him is the greatest compliment that the lawyers of the bar of this court can pay.

If your Honors, please: In addition, I desire on behalf of the bar of the state to add these few comments:

It is appropriate that the bar of this court, of which Thomas C. Munger was for more than a third of a century a judge, should now express and here record their estimate of his character and outstanding achievements. During more than half of his active life, Judge Munger was a public servant, and for those endeavors, there could be no more lasting or gratifying reward, than recognition that the duties and responsibilities of the offices which he held were well and faithfully performed.

Eminent members of the bar, contemporaries in the practice, men prominent in public affairs, and life-long friends have given sincere expression of eloquent tribute to his life and work. I shall not presume to offer many words of my own.

I knew him only as a judge of this court. It was my privilege to have appeared in his court and participated in the presentation of pending matters at various times during more than thirty years of his tenure.

He had, when he became a federal judicial officer, reached the full maturity of his great intellectual powers.

He observed on and off the bench the best traditions and the finest proprieties. He considered the administration of law without justice to be a vain and empty thing. He recognized established principles of

law as necessary to maintain civic order and stability, and for the security of personal and property rights.

His services as a trial judge were distinguished by his habitual practice of making a study of the record and the questions involved before the commencement of the trial; by patient hearing and strict impartiality of decision. He was a patient listener, quick to perceive the main points at issue, readily discerning between sophistry and reasoning, and recognizing arguments which proceeded from collateral, incidental and immaterial matters. He knew his way among the intricate procedures of the law. He could sense the point of argument, where the most candid advocate is tempted to stop a little short of complete revelation; and he knew where there was an urge to over-emphasize. He could use his ready wit, his humor, his sarcasm, or his learning with equal ease and skill. He could quickly orient a statement of fact with his own philosophy. When the facts were stated the argument was nearly finished, because he could apply his conception of legal principles with small aid of counsel.

He had an orderly and analytical mind. The problems presented by a cause seemed, with small effort on his part, to fall into their proper relation. He was extremely conscientious and thorough in endeavoring to get to the bottom of every situation of fact and each question of law presented to him. He explored carefully into minute details, which might conceivably have a bearing upon the case before him, and often he would develop an important and decisive point out of something that counsel had not considered worth dealing with.

He maintained the strictest dignity of the court by his quiet and careful demeanor, and was slow to believe that others, in the earnest assertion of assumed rights, intended to show disrespect to the court or disregard of its ruling.

His profound knowledge of the law, alert mind, quickness of perception, fearlessness and patience, accompanied with a fine presence and courteous bearing, made him an ideal trial judge. His **decision** spoken from the bench, and his written opinions evidenced a comprehensive knowledge of the law, faultless logic, and a fine discrimination in the choice of words.

It is a tradition that the people of this country have faith and pride in, and respect for the courts. Elevated, and in a measure isolated, as judges are, the American people nevertheless feel that the courts are their own and their refuge and their protection.

There are many people not directly connected with any work of the court, who have never seen or may never see a court of the United States. They do not know its jurisdiction or comprehend its procedure.

The principles which control its proceedings or determine its deliberations and conclusions are unknown by them. But they continue with a satisfying assurance under the roof and in the ownership that their efforts and labors have raised and accumulated, and they enjoy and have confidence in their freedom and rights because they know there is an established area which oppression may not enter; that they cannot be dispossessed, injured or destroyed except by the act of their peers, guided by the law and crystallized into a lawful judgment, proceeding from a just consideration of the facts, controlled by the principles of law of universal application, and not by the caprice of one man. They have faith that if all other redress fails, there is, as a last resort, a remedy provided in some manner for them, not clearly understood or discerned, in the Constitution. It is not infrequently the lawyers hear the assertion from the layman who believes that he has been wronged, that he will go to the Supreme Court of the United States, if necessary, for his final relief. It is imperative for our democracy, freedom and domestic tranquility that this confidence and pride in and respect for the courts may never be lessened, much less destroyed. True, it is often incorrectly conceived and childlike in its simplicity, but it is noble in its origin and of indispensable importance in its continuance. The faith of the common man that American, even-handed justice under law is available, without discrimination, for all, should never be penetrated by even the faintest suggestion that this belief is in any degree unfounded or untrue, either in theory or experience.

Judge Munger so conducted the business of the court that he contributed to that tradition. There was no loss of confidence in, or respect for, the courts or the law because of any act or omission of Judge Munger.

Judge Munger retired from this court at the age of eighty, after more than thirty-four years of continuous service as a federal judge. He had earned repose. Characteristically, however, he was ready to continue to serve. His retirement was more nominal than actual. The compelling force of a lifetime of habit and devotion was not to be suddenly and completely denied. He did continue to perform the duties of his office and the work of the court to the end of his life.

It may be said, without over-statement, that Thomas C. Munger, as a federal judge, gave his life to the service of his country.

JUDGE WOODROUGH: The resolution presented by the committee of the association is adopted by the court.

I will ask the Honorable James A. Donohoe, United States District Judge for the District of Nebraska, to add something at this time.

JUDGE DONOHOE: Apprehension of death is instinctive in all men. So

far as we know, man is the only creature to whom is given the knowledge that this earthly life must end in death. We know that all of our labors and earthly ambition will one day end in death, for death is the common lot of mortals. Millions of men who have dreamed dreams of achievement, and who have labored long and devotedly, have passed through that grim gateway whose gloomy portals the living may not trod. Death is the only beckoning to the great adventure beyond the grave. The gift of life, and all that it has in hope, struggle, labor and fruition, leads but to the grave.

We are conscious that our promised length of days are three score years and ten, but, notwithstanding, our impending death enters but little in our plans and calculations for our continued living. We have a feeling that we will be spared for years to come, that in our case exception will be made to enable us to complete our earthly endeavors before the call shall come to "cross the bar." There are two theories which undertake to account for or explain this unusual impulse: It is contended by some that it is prompted by a natural instinct to guard the race from self-destruction in times of great trial and suffering from seeking surcease in self-destruction. The great mass of mankind, however, subscribe to the teaching of religion that man was created to know and serve God here on earth, and after death to enjoy with Him the Kingdom of Heaven.

In support of the first theory, we see around us in nature the struggle of plant and animal life to live and avoid death. On the other hand, we have the laws of nature pointing the way to life and death, and the consideration of revealed religion teaching us the why and the wherefore, the mystery of it all, and bringing us comfort and consolation after our strength and vigor wanes with the lapse of years, and the feebleness and helplessness of age approaches.

The universal yearning of mankind to look beyond the tomb and explore the "dark shadows of the valley of death" can only be satisfied by faith in Him who was sent by the Father to teach the doctrine of life after death. He, in whose memory we convene this morning, yesterday was in the enjoyment of all of his faculties, exercising in full measure all of his powers and responsibilities. Today he is gone. His voice is stilled. The power of his future decree ceases, but the compelling influence of his example will live on.

Judge Munger lived and labored throughout the promised length of days, and seemingly as a mark of special favor for work well done, he was accorded an additional ten years and more.

Nearly thirty-five years of that time he served on this bench with great distinction to himself and to the court. The honor and fidelity of

the court was his first consideration. His greatest endeavor in life was to fulfill the responsibility which came to him, and to maintain this great institution in the spirit of the founding fathers.

He fully and devotedly believed in Christianity and its teachings, and with the lengthening of his days he contemplated and approached death with calmness and confidence that death was not the end. If the spirit of man comes forth from the grave and leaves only dust and ashes behind, as we Christians confidently believe, and if the spirits of men who have gone participate or concern themselves with the cares and responsibilities of this life, we must believe that the spirit of Judge Munger will linger on with attention and concern in the Halls of Justice, where he served so devotedly and conscientiously.

As stated, his greatest concern was the court, and the administration of justice in the spirit of the founding fathers. His greatest endeavor was the performance of the duties of his high office honestly and efficiently. He is gone, and not only his spirit, but his memory, will live as an inspiration and a guide to those of us who may follow but never replace him.

Now, in the afternoon of life, I look back in retrospect through a half century of my life, and I see sometimes little money or property, but always enough. I see, however, my great good fortune that sustained and encouraged me throughout the years. I see a galaxy of friends, tried and true. From early boyhood and in every concern or ambition in my life, some great and true friend came to my assistance with his counsel, influence and experience. Among the greatest of these was Judge Munger. When I came to the bench, he graciously offered me his help and assistance, which I readily accepted and enjoyed until the time of his death. Throughout the many conferences and conversations which we had concerning our work, I gathered certain judicial maxims, which he frequently expressed in one form or another. They are:

1. You cannot commit error until you have acted.
2. When you have finally decided, after careful consideration, do not alter or change your decision, unless convinced that it is clearly wrong.
3. Do not permit counsel to hurry you in signing an order. Never sign an order while they wait. Set it aside, and when they are gone, carefully read and consider it.
4. Read every brief that is submitted. The attorney who prepared it spent his time and labor with the expectation that you would do so. While you may be familiar with the cases, and may be committed on their construction, still this attorney may have new and persuading thoughts that you may not have considered.

5. Keep your appointments punctually, if you would enjoy the respect of litigants and their attorneys.

6. Judges who deserve respect receive it.

It was his great desire and prayer that when the call came he should be found engaged in the work that he loved so well. That great desire was afforded him. On the morning of the day that he was stricken, he was at work in his office as usual. Evidently being somewhat fatigued, he took with him his briefs and files and started for home where he might work reclining. The sand in his hourglass was falling fast. Before reaching home, he fell. His time had come. He approached the end with that same calmness and deliberation that had governed his activities in life. With house in careful order, he died in the abiding faith of his life, and with that faith he approached the gates of the great beyond.

In a little while, those of us who are gathered here too will be called, and when that time comes, I confidently expect to find on the other shore, not too far away, the friends of my life, and among them and foremost shall be Judge Munger, and that in the will of God I may have the pleasure and privilege of going on with them in association and companionship throughout eternity.

JUDGE WOODROUGH: It is a very great responsibility imposed upon the federal judges that their justice must be administered with strict conscientious regard for the comity existing between the state and federal courts. No federal judge ever discharged his duties in that respect more perfectly than Judge Munger.

I will ask Judge Paine to speak now for the Supreme Court of our state.

JUDGE BAYARD H. PAINE: May it please the Court: Chief Justice Simmons would take this place if he were not attending the American Law Institute.

These remarks will be directed to a consideration of the earlier years of Judge Munger's life, before he was appointed to the federal bench, which he so greatly honored.

This phase of his life is presented on this memorial occasion in the belief that his later and official life with which we were all familiar was influenced to a greater or lesser degree by his early experiences, which few of us have known.

This material could be gathered only through the courtesy of the members of his family, and that of several early associates.

It is well known that Judge Munger's innate modesty was so great that neither the editor of *Who's Who in America* nor the compilers of

the several histories of Nebraska were ever able to secure from him over a half dozen lines for their publications.

Judge Munger was born at Fletcher, Ohio, July 7, 1861. His mother was Mary Margaret Ervin, of Scotch-Irish descent. His father, Samuel Cyrus Munger, came from a long line of New England ancestors. The first was Nicholas Munger, who came from England in 1630 and settled at Guilford, Connecticut, on Long Island Sound, just east of New Haven. Nicholas Munger had two sons, and it has been thought that all of the Mungers in the United States could be traced to one or the other of the two branches of this family. Five men of the Munger family fought in the Revolutionary War, and all survived the war and the Government granted them tracts of land near Middlebury, Vermont.

One summer, some years ago, on one of their many automobile trips, Judge and Mrs. Munger spent some time looking up the family records at Guilford, and then visited Vermont, where they found a large stone house called the "Munger House," located on a stone road, still marked "Munger Road." The renter living there then was a French-Canadian, who showed them through the house. A large square chimney in the center accommodated fireplaces in each of the four rooms. In the kitchen, above the fireplace there was a very large brick oven, which had been used up to recent times.

Judge Munger's grandfather, Hervey Munger, was born in Middlebury, Vermont, son of Jonathan Munger, of Norfolk, Connecticut, who was perhaps the seventh generation from the original Nicholas Munger. The family later moved to Montgomery County, Ohio, where they continued living on a farm.

The father of Judge Munger was born in Warren County, Ohio, August 19, 1832, and was next to the youngest in a family of fourteen. The mother of Samuel Cyrus dying when he was a mere youth, he secured an education only by the greatest of privations, finally attending the National Normal College of Lebanon, Ohio, for one year. He enlisted in the Union Army, but was rejected on account of poor health. He became a school teacher, and lived a simple, earnest, pure life, hated wrong, and denounced social injustice.

Two sons were born in this family: Judge Munger and Dr. Elbert Ervin Munger, the younger son, who is an active practicing physician of Spencer, Iowa.

Judge T. C. Munger in his youth worked outdoors with his father, clearing fields and chopping trees to sell wood by the cord. This work gave him a knowledge of trees, which he always enjoyed identifying.

His father during these summers taught him bird lore, and interested

him in all outdoor life. Naturally it came about that his two chief hobbies were golf and deep-sea fishing, together with many automobile trips over the United States and Europe.

Judge Munger's mother was born in Brown County, Ohio, November 13, 1832, and he often said that among her many fine qualities she had a never-failing sense of humor. She graduated from the Highland Female Seminary, and then attended the Normal College at Lebanon, where she met her future husband. At nineteen years of age she became principal of a Cincinnati public school, and continued to teach school for more than forty years.

The parents were married in 1859, and moved to different towns where the husband and wife secured positions as teachers, living for a time in Lima, Ohio, and then at Van Wert, Ohio, where the mother was principal of an elementary school for several years. She was always very active in the cause of temperance, and was a member of a Crusaders organization, which held services in saloons and did very effective and courageous temperance work.

When Judge Munger was fifteen years old he joined the Presbyterian church, of which he remained a member until his death. He never used tobacco or liquor in any form.

When he was sixteen, they moved to New Sharon, Iowa, where both parents secured positions as teachers in the public school. Judge Munger received a diploma when he graduated from the high school at New Sharon, and often said that that was the only diploma he ever got.

Andreas' *History of Nebraska*, published in 1882, says: "On the 4th of August, 1879, Mr. and Mrs. Munger were selected principal and assistant principal of the high school of Nebraska City." A year later we read they were re-elected. "No change was made in teachers' salaries."

Judge Munger attended for two years the Episcopal college located there, founded by Bishop Clarkson. He studied Latin and Greek, in which he was proficient, and was always able to read and translate from his Greek New Testament. He had an excellent teacher in mathematics, and pursued a course in trigonometry and surveying.

While living in Nebraska City, Judge Munger worked for one summer on Senator Van Wyck's farm. In the fall of 1881 he attended Iowa College, now called Grinnell College, but could not secure any jobs to pay his expenses and his meager funds were exhausted, so he did not complete the full school year.

However, while attending Iowa College, he met Miss Carrie A. Case, who had come to Grinnell from Cedar Falls, Iowa, and the friendship thus started was continued by correspondence over the years until

their marriage on June 5, 1888. She proved through the years to be a most faithful and devoted helpmate, sharing all of his joys and sorrows.

His knowledge of surveying led him to South Dakota, where the C. & N. W. Railway Company was surveying to build a new line; and securing a job, he at first drove stakes, then carried the chain and finally assisted in making computations and accurate field notes, and saved nearly all the money he earned during this long summer, returning to Nebraska to work on a farm that winter. The next spring he went to Portland, Oregon, and joined another railroad surveying party for the season, and began studying law at nights.

He returned to Nebraska City and studied law a short time in the office of Judge Mitchell, and in September went to the Union College of Law in Chicago, and made excellent progress that entire school year, but again having exhausted his funds he could not return to continue the course.

Among the lifelong friends he made that year at law school were A. R. Talbot, a senior, who graduated in June, and opened an office in Lincoln, and Charles A. Robbins, a classmate, for many years a professor in our Nebraska University Law School.

Judge Munger taught country school in Otoe County that fall for one term, but then secured a country school near Firth, Lancaster County. At night he continued his study of law with books borrowed from A. R. Talbot, under whom he was registered as a student to qualify to take the bar examination.

When he had completed the requirements, a committee of three, of which H. H. Wilson was chairman, gave him a very thorough examination, and made their report, commending him most highly and on February 5, 1885, upon motion of M. Montgomery, who had been a Brigadier-General in the Civil War, he was admitted to practice law in the District Court of Lancaster County before Judge S. B. Pound. On October 29, 1885, upon motion of A. R. Talbot, he was admitted to practice law before the Supreme Court of Nebraska, which at that time consisted of Amasa Cobb, Chief Justice, Samuel Maxwell and M. B. Reese.

In the summer of 1885 Judge Munger opened a law office in Benkelman, Dundy County, and was very proud of the tin shingle, which he painted himself. In the fall of that year he was elected county attorney of Dundy County, which office he had been filling by appointment, and had some exciting experiences with criminal cases, involving cattle stealing and other ranch matters.

As the law business was not very rushing, he added to his income by taking prospective land-seekers out over the hills of Dundy County on

horseback and locating them on their 160-acre homesteads, his knowledge of surveying aiding him in this locating work.

In the fall of 1886 he moved to Lincoln from Benkelman, and had a desk in the law office of Snelling & Talbot, in the Academy of Music Building, located where Gold's store now stands, and began, as all young lawyers do, by making collections. Sometime in 1887 Mr. Snelling moved to Provo, Utah, and W. J. Bryan became a partner in the firm of Talbot & Bryan, at which time Judge Munger opened an office of his own, which continued until 1893, when he entered a law partnership with John M. Stewart, who had moved to Lincoln from Minden, Nebraska. Their office was in the Burr Block, and this partnership continued for fourteen years, until Judge Munger's appointment to the federal bench.

This firm of Stewart & Munger was in every way an ideal partnership, in which each contributed his entire talents to building up a very successful law firm, actively handling the business of their many clients in an energetic, safe and conservative manner. Their confidence in each other was deep and abiding. Two of the young men whom they took into their office out of law school were, first, R. O. Williams, and later, D. H. McClenahan.

In 1894 he was elected a member of the legislature from Lancaster County, and served one term. He was named chairman of the important judiciary committee, and was very active in securing an appropriation to build the library for the State University. Chancellor Canfield often said that without Judge Munger's work this appropriation would not have gone through the legislature in those distressingly hard times. He did not run for a second term in the legislature, but was elected county attorney of Lancaster County in 1896, and served until 1900. He was a vigorous prosecutor. This statement is made in one history of his activities as county attorney:

One of the things accomplished during his term was the breaking up of public gambling, which had up to that time been common in the city of Lincoln. A grand jury was called and many indictments against the gamblers returned. Two were sentenced to the penitentiary; others were given long jail sentences, and the rest driven from the city. The old public resorts of gambling were closed, and have never since been opened.

Judge Munger took an active interest in Republican politics, and became chairman of many committees, on which he always served with conspicuous success.

In 1902, while practicing law, Judge Munger built the commodious

home at 1745 E Street, Lincoln, where the family has since resided. Aside from the devoted wife, the family consists of three children.

Mrs. Ruth Munger James attended Wellesley College and returned to graduate from the Nebraska State University. Her husband was president of the First National Bank of Stromsburg until his recent death.

Alfred Case Munger graduated from the University of Nebraska and received his LL.B. from Harvard Law School in 1905, since which time he has practiced law in Omaha, Nebraska, except two years during which he served in France during the World War.

Mrs. Margaret Munger Mattison graduated from the University, and her husband is a druggist in Lincoln.

Judge Munger was happy in the fact that each of his three children received Phi Beta Kappa honors at the University of Nebraska.

Judge Munger's private life was beyond reproach. His mind and speech were clean; he never used an oath, nor conducted himself unseemly. As a lawyer he was an industrious student of the law, a patient digger, going to the bottom of every case, and preparing his evidence and drafting his pleading with such unusual care that he was rarely if ever taken by surprise in the trial of any case.

Dr. Elbert Ervin Munger, the younger brother of Judge Munger, writes in a letter that he recalls meeting the Judge at the Grand Central Station in Chicago early in 1907, enroute home from Washington, the commission for the federal judgeship in his pocket, after his call upon the late President Theodore Roosevelt. He was not as jubilant as might have been expected, but in a rather serious frame of mind, as if contemplating the more onerous duties of his new position. He related briefly some details of his visit with the President; found him very human, working in his office, shirt sleeves rolled. The visit completed, President Roosevelt said, "You look and talk to me like a man who will make a good judge."

After serving ten years under Judge Munger as a referee in bankruptcy in fourteen counties in central Nebraska, I feel that these words from the Second Epistle of Peter might very appropriately be used to describe the daily conduct and aim of Judge Munger:

And beside this giving all diligence, add to your faith virtue; and to virtue knowledge; and to knowledge temperance, and to temperance patience.

Were I to speak of Judge Munger's record as a judge, it could be summed up in the following words, used by Judge Delehant in his memorial address on the late Judge E. E. Good:

He discerned rightly and maintained faithfully the traditional judicial obligation of intellectual integrity and moral courage; for though not precisely identical, these two qualities can never be divorced. He reckoned intellectual rectitude an obvious and simple duty; not a badge of distinction.

JUDGE WOODROUGH: During many years of his active career on the bench, Judge Munger devoted much time to work on the Circuit Court of Appeals of the Eighth Circuit, and his opinions written for that court were conspicuous, ranking with the best of those that were written for that court. His services were always highly valued and esteemed in that court and his opinions given great weight.

Our Senior Circuit Judge of that court, Judge Stone, was unable to attend and has sent the letter which you have heard read.

One of the United States marshals appointed by Judge Munger and myself, a dear friend of us both, old Jim Dahlman, in making a little talk on an occasion, said that he had never known any man who didn't experience some tugging at the heartstrings, upsurge of the spirit and stirring of a hope to do good when he came to take the oath required of all who are elected or appointed to office in this republic. But Jim's public career was long, and he also conceded that though the spirit of all was willing, the flesh of some had proved weak. The very soaring of the spirit and wishful thinking at the start has perhaps even hastened some falls from grace when work got tiresome and the harvest scant and human nature remained as it is. But on this occasion we do honor to the memory of a great public servant who not only entered upon his office resolved to do his best; he carried that resolution through every day and month and every year of his long incumbency, sincerely, earnestly, diligently and effectively to the end.

I undertook one summer to make an index of a couple of big volumes of Judge Munger's opinions, extending at that time over a period of some twenty years. He had them all copied with the old hand press and blotter paper method they used in my boyhood. He never told me why he copied them that way, but I think he figured it saved waste of government money. Not a penny of the public money was ever wasted through his hands. Whatever ideas about spending public moneys might be prevalent, he had only one standard in regard to them, and it was rigorous and rigid. He had a system of keeping track of his opinions himself, but I wanted one we could all use. It was a longer and harder job than I figured and I failed to finish the job, but I want to bear witness: There wasn't a memorandum in the big volumes that failed to disclose painstaking care, full consideration and clear presentation of the reasons and authority on which sincere belief of the writer

was founded. I never found a sentence extraneous to decision or one put in for any other effect than to meet the requirements of the judicial action. The way so many of us are built, I may confess that I looked a little close; surely there was an unguarded hour among those thousands of hours; some temptation proved irresistible to inject a *bon mot* apropos, a quip *ad hominem* or *ad mores* or *ad adjudicata*; some kick against the pricks of authority; something of the individual *dehors* the judge; but there was never such an instance. Judge Munger's resolution was firm, disciplined and enduring. He planted his judging standard on the highest ground and maintained it there, firm and steadfast as the base itself, from beginning throughout.

I think Shakespeare's lines apply to him: "He was constant as the northern star of whose true fixed and resting quality there is no fellow in the firmament. The skies are fixed with unnumbered sparks, they are all fire and every one doth shine; but he was one in all that held his place." The world is furnished well with men, yet in the number I have known none that so unassailable held on his rank unshaken of motion. The archives that record his honorable discharge of duty for more than thirty years instruct, admonish and inspire, and we are thankful that they're not impermanent.

Nor was there ever a shade or shadow in his life behind the arras of the open court to detract from the perfection of Judge Munger's service to the public and to our institution. He lived his long life actively and vigorously, an informed and responsible, useful citizen, a man of affairs, a wise and devoted husband, father, neighbor and true and loyal companion and friend.

It has been well said that a great difference between one man and another is the difference in their respective capacities to attend to their own business, and throughout life Judge Munger did with his might the things his own hands found to do. He looked before he leapt. Some spend the years of life allotted trying to repair blunders and working out of the pitfalls and sins that do beset the road we travel in. But he trained his hands to work with his head and his head to direct his hands, and as he sowed he reaped a good and well earned harvest of respect from all, loyal and constant affection from those that mattered and material and spiritual successes—that sufficiency of the material which is better than an excess—and a serene, enlightened and steadfast spirit.

If I should end my observations here, I would have said of Judge Munger more than can be truly said of a man in a thousand. But he was a man in a thousand. There was more good in him and he carried on without the faults that lesser men succumb to. Besides profound

learning in the law, which is to some extent enlightening, Judge Munger had read and assimilated widely and reflected on it. He was addicted to toiling terribly and did so in other fields than the law. Even on his extensive travels throughout this country and in many foreign lands, he did not idle away the hours; he noted what he saw and heard and broadened his understanding. And all the treasures of his knowledge that he gathered found lodgment in an humble, kind, good heart. The unassuming modesty of the man marked him all the days he walked among us. As he followed all of the other injunctions of the Commandments, he never tried to take to himself any of the bolts or thunders or majesty that belong to the law whose administration was confided to him. And so as he was kind and considerate of others, compassionate and helpful and unselfish, even his excellences and superior discharge of duty as a man and as a judge begot no rancor, envy or jealousy, but he gained and kept affectionate regard and the public and private memory of him is blessed.

It will be ordered that the contribution made today in his honor be recorded in the journal of the District Court of the United States for the District of Nebraska. The court will also stand adjourned as a mark of our respect to him.

JUDGE WOODROUGH: We are happy that a worthy portrait has been made of Judge Munger, and I now call upon the Honorable Richard O. Williams, Chairman of the Committee, to present the portrait to the court.

MR. RICHARD O. WILLIAMS: If your Honors please: The service that I am requested to perform at this time on behalf of Mrs. Munger and the members of her family is a delicate and tender service; one that appeals readily to our deep emotions. It is perhaps not out of place that I undertake to perform it.

I knew Thomas Charles Munger from my early boyhood and his early manhood. I knew his father and mother. They were personal friends of my father and mother, more than sixty years ago in Nebraska City. Judge Munger's younger and only brother was a boyhood chum of my older brother. The Mungers were choice folk, strong of intellect, cultured, high-minded. Judge Munger was well born. Throughout his life, at every period of it, he exemplified the high standards of intellect, morals and religious faith that he had inherited.

While I was attending the University of Nebraska Law School from 1891 to 1893, I was in the office of Thomas C. Munger and the two years following I was associated with the firm of Stewart & Munger. Throughout the many years of our acquaintance Judge Munger at all times held, not only my highest respect, but also my sincere affection.

During these later years, I appeared often before him in this court. His integrity, his ability, his industry were and will remain an inspiration to me and to all who knew his worth.

A United States District Judge in a neighboring state, who had been invited to attend this memorial service and who expressed regrets that he could not be here, added to his letter these words of tribute:

I had the pleasure of serving on the United States Circuit Court of Appeals with Judge Munger eight years ago. His sound judgment, his wealth of experience and his splendid ability made him a most helpful colleague. He wanted to be absolutely right at all times and left nothing undone to ascertain the right. He was a distinguished citizen and a gentleman always. As long as the destiny of our country is controlled by men of his type, it will be entirely safe.

This, it seems to me, is a simple and accurate analysis of Judge Munger's character and research methods and a proper estimate of his worth.

For more than a third of a century as a just judge he served the people of Nebraska and litigants from many other states who came into the jurisdiction of this court. Within these walls, in this room where we are now gathered and where throughout these many years of service Judge Munger determined under the law the personal rights and the property rights of hundreds of individuals, his spirit remains and we feel his presence. During these thirty-four years, scores of lawyers have presented here their legal problems. During recess periods they have visited in the corridors of this building and around the tables in this room. They served their clients for a brief day and passed on. We, too, soon shall pass, but there will be left for coming generations to narrate anecdotes and interesting stories, humorous and tragic, that had their beginnings here. With many of these anecdotes and incidents, the name of Judge Munger will be definitely associated. His keen sense of humor, his kindly but cutting repartee, his willingness to lead the young practitioner gently over the hard path of evidence; his almost cruel lack of sympathy for the experienced lawyer who came into court without preparation, trusting to luck and a bold front to get his case to the jury; his words of counsel and his attitude of mercy towards the first offender; all these and other incidentals in the judicial life of Judge Munger will become courtroom lore as the years pass. It seems, therefore, especially fitting that the portrait of Judge Munger should become a permanent part of this room where he has left so much of his invisible but indestructible presence. It is

fitting that future members of the bar of this court shall know something of the physical appearance of Judge Munger so that the traditions coming out of the many years of his service here may be associated in some degree with his physical form and countenance.

But the portrait of Judge Munger is not alone for the bench and bar of the future. It is also for us who knew him and must carry on for a time. We are better lawyers and better men for having known him and having associated with him.

Your Honors of the bench and we of the bar, as we look upon this likeness of Judge Thomas C. Munger, will feel more keenly the inspiration of his immortal personality.

It is, therefore, with satisfaction that I deliver to your Honor presiding at this service, this portrait, a gift from Mrs. Munger and her children to the United States of America for the bench and bar and officers of this court, confident that it will be given an appropriate place on the walls of this room.

JUDGE WOODROUGH: With the presentation of this portrait, we have completed the memorial services as arranged by the committee which was selected from the bar of the United States District Court of the District of Nebraska, and the representatives of the Bar Association, and the others who have made the collective presentation appropriate for the occasion.

I very gladly accept what has been presented here. The court is not, I believe, the governmental agency which has to accept and preserve the custody of the portrait, but we shall see to it that proper custody is taken and that it is hung in this courtroom where it will be associated with the United States of America, and for the benefit of the bar and for those who come after, which was intended by the donors.

If there are individual expressions to be made at this time, the court will hear them; but unless there are such, the services as arranged are, I think, complete with these presentations.

The court will stand adjourned out of respect to the memory of Judge Munger.